IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:04.04.2007

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM

AND

THE HON'BLE MR. JUSTICE S. TAMILVANAN

WRIT APPEAL Nos.1289, 4162, and 4163 of 2004

Tamil Nadu Housing Board
rep. By its Chairman
Anna Salai, Madras 35. .. Appellant in WA.No.1289/2004

vs.

1. A.P. Damodrasamy (died)

2.The State of Tamil Nadu
rep. By its Secretary
Housing and Urban Development
Department, Fort St. George
Madras.

3.The Special Tahsildar
Housing Board Scheme No.2
Office of the Collector
Coimbatore.

4.Andal Ammal

5.D. Jayachandran
(R.4 and R.5 were impleaded
as party respondents vide
order of Court dt.29.03.2007
made in WAMP.No.67/07.) .. Respondents in WA.No.1289/04

1.Andal Ammal
2.Jayachandran .. Appellants in WA. Nos.4162
and 4163 of 2004.

vs.

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1.The State of Tamil Nadu
rep. By its Secretary
Housing and Urban Development
Department, Fort St. George
Madras.

2.The Special Tahsildar
Housing Board Scheme No.2
Office of the Collector
Coimbatore.

3.Tamil Nadu Housing Board
rep. By its Chairman
Anna Salai, Madras. .. Respondents in WA. Nos.4162 and 4163 of 2004.

Writ Appeals filed under Clause 15 of the Letters Patent against the order of The Honourable Mr. Justice C. Nagappan dt. 8.8.2003 in W.P.No.12029 of 1996, and that of the Honourable Mr.Justice D.Murugesan, in WP.Nos.12030 and 12031 of 1996 dated 17.04.2004 respectively.

WP.No.12029/1996: To issue a Writ of Certiorari, calling for the records relating to the notification under Section 4[1] of the Land Acquisition Act 1894 published in the Tamil Nadu Government Gazette No.14A Part II, Section 2[Supplement] dated 13.04.1994 pursuant to GO MS 186 Housing and urban Development dated 24.02.1994 and consequent notification under Section 6 of the Land Acquisition Act 1894, published in the Tamil Nadu Government Gazette No.239, Part II, Section 2 dated 08.05.1995 pursuant to G.O.MS.No.491 Housing and Urban Development LA.3[2] dated 5.5.1995 issued by the Ist Respondent and quashing the same in so far as it relates to the petitioner's land in S.F.No.269-1-270-1 measuring an extent of 0.790 and 1.68.5 hectares respectively in Vilankurichi village, Coimbatore North Taluk, Coimbatore district.

WP.12030 / 1996: To call for the records relating to the notification under Section 4[1] of the Land Acquisition Act 1894, published in the Tamil Nadu Government Gazette No.23A Part II - Section 2 [Supplement] dated 14.06.1995 pursuant to G.O.MS.No.506 Housing and Urban Development [LA.3[2] dated 17.05.1995 and the consequent declaration under Section 6 of the Land Acquisition Act 1894 published in the Tamil Nadu Government Gazette No.286 Part II Section 2 dated 17.06.1996 pursuant to G.O.Ms.No.291, Housing and Urban Development [LA.3[2] dated 17.06.1996 and quashing the same in so far as it related to the petitioner's land in S.F.No.267/6 and 268/4 Vilankurichi village, Coimbatore North Taluk, Coimbatore North Taluk, Coimbatore District measuring an extent 1.055.0 hectares and 0.82.5 hectares respectively.

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WP.No.12031/1996:

To call for the records of the proceedings relating to the notification under Section 4[1] of the Land Acquisition Act 1894 published in the Tamil Nadu Government Gazette No.20 A, Part II, Section 2 [Supplement] dated 24.05.1995 pursuant to G.O.MS.No.480 Housing and Urban Development [LA.5[2] dated 27.04.1995 and the consequent declaration under Section 6 of the Land Acquisition Act 1894 published in the Tamil Nadu Government Gazette No.254-II Section 2 dated 27.05.1996 pursuant to G.O.M.No.281, Housing and Urban Development LA.3 [2]1 dated 24.05.1996 issued by the 1st Respondent and quashing the same in so far as it relates to the petitioner's land in S.F.No.235 to 236 in Vilankurichi village, Coimbatore [North] Taluk, Coimbatore District measuring an extent of 4.20 hectares and 3.59.5 hectares respectively.

For appellant in WA.No.1289/04 & for R.3 in WA.Nos.4162&4163 of 2004. : Mr. P.S.Raman, Addl. Advocate General-I for Mr. K. Chelladurai

For appellants in WA.Nos.4162 & 4163 of 2004 & For R.4 and 5 in WA.No. 1289 of 2004. : Mr. R. Muthukumarasamy,Sr.Counsel for Mrs. Gladys Daniel

For respondents 2 and 3 in WA.1289/04 and Respondents 1 and 2 in WA.Nos.4162 and 4163/2004 : Mr. K. Elango Spl. Govt., Pleader

..

COMMON JUDGMENT

(Judgment of the Court delivered by P. SATHASIVAM,J.)

Aggrieved by the order of the learned single Judge dated 08.08.2003 made in W.P.No.12029 of 1996, allowing the writ petition and quashing the acquisition proceedings, the Tamil Nadu Housing Board has filed W.A.No.1289 of 2004.

2. Challenging the order dated 17.04.2004 made in W.P.Nos.12030 and 12031 of 1996, dismissing the said writ petitions, the legal heirs of original writ petitioner, A.P. Damodarasamy have filed W.A.Nos.4162 and 4163 of 2004.

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3. In view of death of the original writ petitioner, viz., A.P. Damodarasamy, his legal heirs, viz., wife Andal Ammal and son D. Jayachandran, filed WAMP.No.67 of 2007 to implead them as respondents 4 and 5 in W.A.No.1289 of 2004. In view of the reasons stated in the affidavit filed in support of the above petition, we ordered the said petition.

4. In W.A.Nos.4162 and 4163 of 2004, the appellants have filed WAMP.Nos.68 and 69 of 2007, seeking permission to raise additional grounds in the appeals. By order dated 29.03.2007, we allowed both the said applications.

5. At the request of the Tamil Nadu Housing Board, Government of Tamil Nadu initiated acquisition proceedings under the Land Acquisition (Central) Act, 1962, for construction of houses under Ganapathi Neighbourhood Scheme Phase II. As stated earlier, in WP.No.12029 of 1996, the learned single Judge (C. Nagappan,J.), quashed the acquisition proceedings on the ground that publication of Notification under Sections 4 (1) and 6 of the Act was not published in one English daily. In the other two writ petitions filed by Late Damodarasamy, the learned single Judge (D. Murugesan,J.), rejecting all the contentions, refused to interfere with the acquisition proceedings and dismissed both the said writ petitions.

6. We heard Mr. R. Muthukumarasamy, learned senior counsel for the land owners, Mr. P.S. Raman, learned Additional Advocate General-I for the Tamil Nadu Housing Board and Mr. K. Elango, Special Government Pleader for the State.

7. Mr. R. Muthukumarasamy, learned senior counsel appearing for the land owners has raised the following contentions:

(i) The notification issued under Section 4(1) of the Act by the Government of Tamil Nadu, authorised the Special Tahsildar (Land Acquisition), Housing Scheme Unit III to perform the functions under Section 3 (c) of the Act, but the notice and proceedings under Sections 5-A and 5-A(2) of the Act show that the same had been conducted by the Special Tahsildar (Land Acquisition) Housing Scheme Unit II. In the absence of amendment to the notification, the action taken by the Special Tahsildar, (Land Acquisition), Housing Scheme Unit II cannot be sustained; as such the entire acquisition proceedings are liable to be quashed;

(ii) The Government has not considered the report of the Collector, instead declaration was passed on the basis of the report of the Special

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Commissioner, who has no role in the present acquisition proceedings; hence, the declaration made under Section 6 of the Act is not a valid one and on this ground the acquisition proceedings are liable to be interfered; and

(iii) The award passed in all these cases were not duly approved by the Government or the authority authorised; hence, on this ground also the acquisition proceedings are liable to be interfered.

8. With regard to first contention, it is brought to our notice that in the notification issued under Section 4(1) of the Act, the Government of Tamil Nadu, authorised the Special Tahsildar (Land Acquisition), Housing Scheme Unit III to perform the functions under Section 3(c) of the Act. A perusal of the notice issued under Section 5-A as well as the proceedings under Section 5-A (2) show that the entire proceedings under Section 5-A of the Act had been conducted only by the Special Tahsildar (Land Acquisition), Housing Scheme Unit II. As rightly pointed out by Mr. R. Muthukumarasamy, learned senior counsel for the land owners, the authorisation given by the State Government for issuing notification under Section 4(1) of the Act is a statutory one. Unless and until the amendment to the notification is issued by the Government, authorising the Special Tahsildar (Land Acquisition) Housing Scheme Unit II, to perform the functions under Section 3(c) of the Act, he has no jurisdiction to exercise the statutory functions. In those circumstances, as rightly pointed out, the proceedings initiated by him under Section 5-A of the Act is void, as the same is done without jurisdiction. Similarly, the award proceedings had also been conducted by the very same Officer without any statutory authorisation, as such the awards are also liable to be quashed.

9. Mr. P.S. Raman, learned Additional Advocate General-I, submitted that, it is true that as per the notification, it was Special Tahsildar (Land Acquisition), Housing Scheme Unit III was authorised to perform the functions of Collector under Section 3 (c) and the entire proceedings under Section 5-A and thereafter, it was conducted by the Special Tahsildar (Land Acquisition), Housing Scheme Unit II. Admittedly, the Special Tahsildar (Land Acquisition), Housing Scheme Unit II had no such statutory authorisation. However, the learned Additional Advocate General submitted that Unit I, II, and III were merged and only the Special Tahsildar (Land Acquisition) Housing Scheme Unit II performed the functions under the Act. But, there is no evidence by way of errata or amendment to 4(1) notification or an order empowering the Special Tahsildar (Land Acquisition), Housing Scheme Unit II to perform the functions under Section 3(c)of the Act.

10. In this regard, Mr. R. Muthukumarasamy, learned senior counsel

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for the land owners has pressed into two decisions of this Court;

(i)1992 (2) Law Weekly 275 (A. Vijayarangam & another vs. State of Tamil Nadu); and

(ii)An unreported judgment of the learned single Judge rendered in W.P.Nos.10268, 10269 and 13956 of 1996 dated 16.04.2004.

11. In the first case, K.S. Bakthavatsalam,J. has observed that Section 3(c) of the Act defines the "Collector" including the Deputy Collector and officer specifically appointed by appropriate Government to perform the functions of Collector under the Act. Relying on Sections 4, 5-A has concluded that, an officer specially appointed by the appropriate Government under the Land Acquisition Act alone can conduct enquiry under Section 5-A of the Act and any enquiry conducted by any other officer will be without jurisdiction, illegal and the same will be non-est in the eye of law. In the case before him, in the notification issued under Section 4(1) of the Act, the Special Tahsildar (ADW) Gudiyatham alone was specially appointed to conduct the enquiry under Section 5-A of the Act. No other notification was brought to the notice of the learned Judge authorising the Special Tahsildar (ADW), Tirupatthur to perform the functions of a Collector and to conduct the enquiry under Section 5-A of the Act. After finding that in the absence of proper authorisation by the appropriate Government, the learned Judge quashed the proceedings of the Special Tahsildar (ADW) Gudiyatam and allowed the writ petition. In the later decision, Prabha Sridevan,J. following the decision of K.S. Bakthavatsalam,J. in 1992 (2) Law Weekly 275 (cited supra), after finding that the officer authorised to perform the functions was Special Tahsildar Unit III, Coimbatore, but the records show that the enquiry was conducted by the Special Tahsildar, Unit II, quashed the acquisition proceedings.

12. As discussed earlier, the authorised person is to perform functions under Section 3 (c) of the Act, the same being a statutory one, we hold that unless the officer is duly authorised by way of notification or order by the Government, he cannot perform the functions as provided in the Act. In the cases on hand, admittedly, the Special Tahsildar (Land Acquisition), Housing Scheme Unit II, who performed the functions under Section 3 (c) and the proceedings issued under Section 5-A, was not duly authorised by way of notification or order by the Government; hence, the action taken by him in all the subsequent proceedings are liable to be quashed.

13. As rightly pointed out by the learned Additional Advocate General, even if we accept the above argument, there would not be any impediment in retaining the very same notification and permitting the Government to proceed further by rectifying the mistake. However, even according to him, as on date (i.e., on the date of hearing), only two days/one day available for the Government for completion of the entire acquisition proceedings as per the provisions of the Act. In such circumstances, even if this Court permits, the same cannot be completed. Accordingly, we have no other option except to quash the entire

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acquisition proceedings, including 4(1) notification in all the three cases.

14. In view of our conclusion in respect of the first contention raised by the learned senior counsel for the land owners, we are of the view that there is no need to consider the other two contentions.

In these circumstances, the entire acquisition proceedings are quashed. Consequently, the Writ Appeal No.1289 of 2004 filed by the Housing Board is dismissed; W.A.Nos.4162 and 4163 of 2004 filed by the land owners are allowed. No costs. It is made clear that, if the Government so desires, they are free to proceed afresh in accordance with law.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

kh

To
1.The Chairman
Tamil Nadu Housing Board
Anna Salai, Madras 35.

2.The Secretary
State of Tamil Nadu
Housing and Urban Development
Department, Fort St. George
Madras.

3.The Special Tahsildar
Housing Board Scheme No.2
Office of the Collector
Coimbatore.

+ 1 CC To Mr.Gladys Daniel, Advocate SR NO.21555
+ 1 CC To Mr.K.Chelladurai, Advocate SR NO.21904
+ 2 CCs to the Government Pleader SR NO 21500, 21502

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